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INFO RUEHK/AMEMBASSY DHAKA PRIORITY 1991  
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RUEHKT/AMEMBASSY KATHMANDU PRIORITY 7265  
RUEHLO/AMEMBASSY LONDON PRIORITY 5188  
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 3415  
RUEHN/AMEMBASSY OSLO PRIORITY 5140  
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0017  
RUEHSM/AMEMBASSY STOCKHOLM PRIORITY 0675  
RUEHKO/AMEMBASSY TOKYO PRIORITY 4251  
RUEHCG/AMCONSUL CHENNAI PRIORITY 9590  
RUEHB/AMCONSUL MUMBAI PRIORITY 6884  
RUEHON/AMCONSUL TORONTO PRIORITY 1349  
RHEFDIA/DIA WASHINGTON DC PRIORITY  
RUEHGV/USMISSION GENEVA PRIORITY 3798  
RHHMUNA/HQ USPACOM HONOLULU HI PRIORITY  
RUEHBS/USEU BRUSSELS PRIORITY  
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S E C R E T SECTION 01 OF 03 COLOMBO 000993

SIPDIS

DEPARTMENT FOR SCA/INSB

E.O. 12958: DECL: 10/21/2019  
TAGS: PGOV PREL PREF PHUM PTER FAID MOPS CE  
SUBJECT: SRI LANKA PRESS FREEDOM ISSUES: SOME STEPS  
FORWARD, OTHERS BACK

REF: A. COLOMBO 855  
¶B. COLOMBO 864

Classified By: DEPUTY CHIEF OF MISSION VALERIE C. FOWLER. REASONS 1.4  
(B) AND (D).

¶1. (S) SUMMARY: On October 26, the two people arrested as accomplices in publishing imprisoned journalist Tissainayagam's "terrorist" articles were released and apparently acquitted of all charges. In releasing V. Jasiharan and Valarmathy Vadivel, the high court judge noted that the only evidence the prosecution had introduced against them was the confession by Jasiharan, which there was reason to doubt was voluntary. Lawyers for Jasiharan and Vadivel told diplomatic representatives that Tissainayagam's attorneys said the presidential secretariat on Monday had signaled the president was prepared to grant Tissainayagam a pardon. It is likely Tissainayagam's lawyers will be in touch with the attorney general, who is in charge of negotiating the conditions of a pardon. Also this week, news broke about instructions from the Ministry of Defense to police to arrest journalists who wrote about serving army officers' political aspirations or activities based on army regulations prohibiting active military personnel from participating in political campaigns. It is widely assumed the measure is meant to stifle discussion of a potential presidential candidacy for CHOD Fonseka. END SUMMARY.  
AN IMPORTANT VICTORY

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¶2. (SBU) On October 26, the Colombo High Court No. 4 announced the "acquittal" of all charges against V. Jasiharan and his common-law wife Valarmathy Vadivel, owners of the press that printed imprisoned journalist J.S. Tissainayagam's North Eastern Monthly and his partners in the related website. (NOTE: Although their release was widely reported in the press as an "acquittal," lawyers for Jasiharan and Vadivel explained to us that the judge's oral ruling was unclear whether the two had been found "not guilty" -- the American concept of "acquittal" -- or whether the charges were being dropped for lack of evidence. The distinction

would have to await issuance of the judge's written opinion. END NOTE.) Tissainayagam was first arrested on March 7, 2008, when he went to a police station to inquire about the arrest of Jasiharan and Vadivel the day before. The guilty verdict and sentencing of Tissainayagam were announced on August 31, 2009 (ref A).

¶3. (SBU) Jasiharan had been charged under the Prevention of Terrorism Act (PTA) with attempting to cause racial or communal disharmony by publishing Tissainayagam's articles. Vadivel was charged with aiding and abetting her husband. In releasing Jasiharan and Vadivel, the judge noted that the only evidence the prosecution had introduced against them was the confession by Jasiharan, which there was reason to doubt was voluntary. At the same time as the acquittal, Jasiharan withdrew his fundamental rights counter suit from the Supreme Court.

¶4. (C) At an October 27 meeting with diplomatic representatives, lawyers for Jasiharan and Vadivel, explained that the acquittal had come about after it became clear that Jasiharan's confession had been made under duress. There had been three medical reports issued that backed up the defense argument that the confession had been coerced: the first was prepared at the time of arrest and showed no injuries; the second was prepared later and indicated injuries; the third was prepared still later and showed more injuries. When the prosecution recognized the direction the judge was leaning, it signaled it was ready to compromise: the charges would be withdrawn if Jasiharan agreed to drop his fundamental rights

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counter suit from the Supreme Court. The lawyers mentioned that in the judge's final oral ruling, it was unclear whether the charges had been dropped or whether the charge had found the couple not guilty. In any case, the judge said he had seen "no evidence" to back up charges against the couple. The judge even underscored that in the case of the wife, she had been charged with "aiding and abetting her husband's aiding and abetting" of Tissainayagam, which was absurd and, therefore, there were "absolutely no charges" against her.

¶5. (C) With their release from prison the focus shifted, however, from their court case to their personal safety. The lawyers said that as long as they were in jail, they were relatively safe. (NOTE: This contrasted with the case of Tissainayagam, whom the lawyers believed was in great danger even in jail. END NOTE.) After their release, however, there may be people who were interested in doing them harm. The lawyers said that in the past, they had had a number of cases of persons released who were later killed. (NOTE: While the number of cases has certainly declined since the end of the war -- we are unaware of any such retribution killings since at least August, if not earlier -- we continue to take threats very seriously. The Germans and British are exploring asylum options for Jasiharan and Vadivel. END NOTE.)

LATEST ON TISSAINAYAGAM

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¶6. (S) On Tissainayagam, the lawyers said they had spoken to his attorneys and had learned that on Monday the presidential secretariat had signaled that the president was prepared to grant Tissainayagam a pardon. (NOTE: They did not specify how the signal was sent. END NOTE.) They noted that there was no written law on whether the president could issue a pardon without a request from the accused, though it was widely assumed in legal circles that such a request was necessary. The lawyers believed that Tissainayagam's team had not submitted a pardon request up to this point because they believed it was futile and were focused instead on the appeal. Now, however, the defense team would reconsider its strategy. It was likely that Tissainayagam's lawyers would be in touch with the attorney general, who was in charge of negotiating the conditions of a pardon. (NOTE: Apart from

post-pardon conditions, such as an agreement on public statements about the case, etc., it also will be important for the two sides to discuss the withdrawal of Tissainayagam's appeal, which would be required before a pardon could be issued. Typically in such cases, negotiations result in a promise that a pardon will be issued later on the same day as the appeal is withdrawn. There is little trust on either side, however, so negotiations could be difficult. END NOTE.)

BEATING A RETREAT

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¶7. (SBU) On the same day that the acquittal of Jasiharan and Vadivel was announced, news also broke about instructions from the Ministry of Defense to police to arrest journalists who wrote about serving army officers' political aspirations or activities based on army regulations prohibiting active military personnel from participating in political campaigns.

(NOTE: It is widely assumed that these instructions were aimed at censoring discussion of the possible presidential candidacy of CHOD Fonseka, who the Rajapaksa leadership apparently views as the one candidate who might spoil the president's re-election aspirations. END NOTE.) The government has cited alleged violation of these regulations as the reason for its October 17 arrest of the editor of the pro-JVP newspaper "Lanka." Several press outlets have

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condemned the government's actions as illegal, because the regulations relate to campaign activities of army personnel and have no legal bearing on media activities. Multiple journalists have protested, citing their freedom to report on public statements. Despite the instructions, however, we have seen no indication that news outlets are altering their behavior, and there continue to be stories about Fonseka's possible candidacy in the press, including pro-GSL papers.

MORE DEATH THREATS AGAINST SUNDAY LEADER

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¶8. (C) On October 25, the Sunday Leader, the newspaper formerly edited by journalist Lasantha Wickrematunge who was murdered last January, ran as their headline "And Now They Come for Us." The accompanying article reported that current editor-in-chief Frederica Jansz and news editor Munza Mushtaq both received hand-written death threats, similar in style to the one Wickrematunga received before his death. On October 27, PAO met with Jansz and Mushtaq, who brought copies of the threats and of the letter Wickrematunga had received and explained their suspicion that the letters were from the same person. They have sent the letters to a hand-writing expert for analysis. Jansz and Mushtaq believe the threats may be related to a suit brought against them by Defense Secretary Gotabhaya Rajapaksa for some critical articles. The editors also complained the paper had been under criticism of late for publishing the finding of a U.S.-based Tamil NGO that the controversial Channel 4 video of the alleged execution of Tamils by Sri Lankan soldiers was authentic. When asked whether they thought they needed protection, Jansz and Mushtaq replied that they had been offered the services of a private security firm but requested that the embassy put more pressure on the defense secretary to improve the media environment.

COMMENT

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¶9. (C) The release and apparent acquittal of the printers arrested with Tissainayagam is very good news. We have not yet seen the court's written judgment, but the verdict appears directly to contradict the conspiracy charges against Tissainayagam since they were the people with whom he allegedly conspired to publish his "terrorist" writings. The stark contrast in the rulings probably stems from the different routes the cases took through the legal system.

Tissainayagam was tried by a judge who did not usually handle PTA cases and was known for her support of the president; Jasiharan and Vadivel went through normal channels. This was bad news for Tissainayagam but somewhat good news for the Sri Lankan judiciary, which apparently can reach independent conclusions when political pressure is absent.

¶110. (S) The president's apparent signal that he is ready to proceed with a pardon of Tissainayagam is also welcome news. Negotiations between the attorney general and Tissainayagam, his family, and counsel could be difficult, given the high stakes. But we should encourage all parties to move to resolution as quickly as possible. More death threats against the Sunday Leader represent a step backwards. The Sunday Leader can be sensational in its reporting and the paper is likely to make the most out of the recent threats. Nevertheless, the threats appear genuine to us and a cause for concern. We will remain in close touch with Jansz and Mushtaq.

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